

# memorandum

Rocky Flats Office

DATE: February 12, 1993

REPLY TO  
ATTN OF: OCC:KDI:02047

FEB 18 1993

SUBJECT: Impact of Bald Eagles on Rocky Flats Plant Environmental Compliance and Biological Strategy

TO: William Dennison, Assistant General Counsel for Environment, GC-11, HQ

Recently two bald eagles have established a nest at Standley Lake and have been observed flying over the Rocky Flats Plant (RFP) buffer zone.

The Rocky Flats Office (RFO) has taken immediate actions in order to prevent a "take." As you know, bald eagles are currently protected under the Endangered Species Act (ESA), the Bald and Golden Eagle Protection Act (BGEPA), and the Migratory Bird Treaty Act (MBTA). Each of these statutes have civil and criminal liability for a "take." Under the ESA, a "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to engage in any such conduct. A "take" under the BGEPA includes pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb. Even approaching an eagle has been interpreted by the Fish and Wildlife Service (FWS) as a "take."

Since the residency of the eagles is a new phenomena, RFO has taken no formal actions to achieve compliance with the aforementioned statutes. RFO submitted correspondence to the FWS concerning the initiation of consultation under the ESA. On February 3, 1993, RFO had an informal consultation with the FWS, the Environmental Protection Agency (EPA), and the Army Corps of Engineers (Corps) concerning the bald eagles. In addition, DOE has issued stop work order to EG&G for all OU3 activities that could potentially impact the bald eagles. EPA and the Colorado Department of Health (CDH) have been informed of this work stoppage for OU3.

RFO projects onsite of RFP and offsite of RFP (including OU3 and Option B) have the potential to adversely impact the bald eagles. The FWS has stated that it considers DOE the Lead Agency under the ESA for the Option B project under a DOE grant to a number of Colorado cities. RFO is initiating consultation in order to achieve compliance with all applicable environmental and biological statutes and regulations, as well as to minimize schedule impacts to the aforementioned RFO projects.

The short-term impact to RFO projects will be to delay them until ESA consultation requirements have been met and an assessment can be made as to the methodology for compliance with all environmental and biological statutes and regulations. RFO will be requesting an extension of the Draft Phase I RFI/RI Report due July 16, 1993. RFO will continue to coordinate with FWS, Corps, EPA, CDH, and Colorado Division of Wildlife regarding RFO's completed and planned actions. In the long-term, RFO will be

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developing a comprehensive strategy for compliance with RCRA, CERCLA, MBTA, ESA, BGEPA, Fish and Wildlife Coordination Act, 10 CFR 1022, Clean Water Act and various State of Colorado statutes and regulations.

  
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